

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

RECEIVED

BRUNICE PATTERSON,

Plaintiff,

v.

AUTO-OWNERS INSURANCE
COMPANY, a foreign
corporation, BILL REAVES, an
individual, and Fictitious
Defendants A-Z,

Defendant.

2007 JUN 27 P 3:30

DEBRA P. HACKETT, CLK
U.S. DISTRICT COURT
MIDDLE DISTRICT ALA

CIVIL ACTION NO.:

2:07CV596-1D

DEFENDANT BILL REAVES' MOTION TO DISMISS PLAINTIFF'S COMPLAINT

COMES NOW Defendant, Bill Reaves (hereinafter "Reaves"), pursuant to Rule 12, *F.R.C.P.*, and moves this Honorable Court to dismiss Plaintiff's Complaint and to further dismiss each count contained in the Complaint, separately and severally, as to this Defendant. Defendant Bill Reaves sets forth the following grounds in support of this motion, to-wit:

1. The Complaint, and each count contained therein, separately and severally, fails to state a cause of action against Defendant Bill Reaves upon which relief can be granted.
2. Count One and Count Two of Plaintiff's Complaint are due to be dismissed, separately and severally, as Plaintiff's Complaint, on its face, alleges that the insurance contract was between Plaintiff and Auto-Owners Insurance Company. See, Complaint at ¶4. Under Alabama law Defendant Bill Reaves, who is alleged in Plaintiff's Complaint to be Auto-Owners' agent and employee, could not be liable for breach of the insurance

contract. See, Pate v. Rawlinson Logging Equipment, Inc., 628 So. 2d 337, 343 (Ala. 1993); see also, Simmons v. Congress Life Insurance Co., 791 So. 2d 360 (Ala. 1998); Cleavland v. Fidelity & Guaranty Life Ins. Co., 2005 WL 3115282 *3 (M.D. Ala. 2005); Owens v. Life Insurance Company of Georgia, 289 F. Supp. 1319, 1324 (M.D. Ala. 2003).

3. Count One and Count Two of Plaintiff's Complaint are due to be dismissed, separately and severally, as Plaintiff's Complaint, on its face, alleges that the insurance contract was between Plaintiff and Auto-Owners Insurance Company. See, Complaint at ¶4. Under Alabama law Defendant Bill Reaves, who is alleged in Plaintiff's Complaint to be Auto-Owners' agent and employee, could not be liable for bad faith. See, Ligon Furniture Co. v. O.M. Hughes Ins. Co., Inc., 551 So. 2d 283, 285 (Ala. 1989); see also, Simmons v. Congress Life Insurance Co., 791 So. 2d 360 (Ala. 1998); Cleavland v. Fidelity & Guaranty Life Ins. Co., 2005 WL 3115282 *3 (M.D. Ala. 2005).

4. That Defendant Bill Reaves has been fraudulently joined and Plaintiff's Complaint and each count and cause thereof, separately and severally, are due to be dismissed.

5. That Defendant Bill Reaves has been fraudulently joined and the Plaintiff's Complaint and all claims against Defendant Bill Reaves, separately and severally, are due to be dismissed on that basis. See, Cleavland v. Fidelity & Guaranty Life Ins. Co., 2005 WL 3115282 *3 (M.D. Ala. 2005); see also, Triggs v. John Crump Toyota, Inc., 154 F. 3d 1284, 1287 (11th Cir. 1998).

6. That Defendant Bill Reaves has been fraudulently joined in this action and is due to be dismissed in that there is no possibility that the Plaintiff can prove a cause of action against Defendant Bill Reaves. See, e.g., Cleavland v. Fidelity & Guaranty Life Ins.

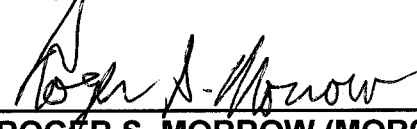
Co., 2005 WL 3115282 *3 (M.D. Ala. 2005).

7. Plaintiff's Complaint is due to be dismissed based upon insufficiency of process and/or insufficiency of service of process as shown by the return of service herein and a certified copy of which is attached to the Notice of Removal filed herein and also hereto as Exhibit "1".


WHEREFORE, THESE PREMISES CONSIDERED, Defendant Bill Reaves respectfully requests this Honorable Court to dismiss Plaintiff's complaint and each count and claim thereof, separately and severally, contained in the Complaint, and to enter an order dismissing Defendant Bill Reaves from this action.

Respectfully submitted this the 27th day of June, 2007.

Respectfully submitted,



ROGER S. MORROW (MOR032)



JOEL H. PEARSON (PEA019)
ATTORNEYS FOR DEFENDANT
BILL REAVES


OF COUNSEL:

MORROW, ROMINE & PEARSON, P.C.
P.O. Box 4804
Montgomery, AL 36103-4804
Telephone: (334) 262-7707
Facsimile: (334) 262-7742

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the above and foregoing upon the following by placing a copy of same in the United States mail, first class postage prepaid on this the 27th day of June, 2007.

Hon. Thomas B. Albritton
Albrittons, Clifton, Alverson,
Moody & Bowden, P.C.
P.O. Box 880
Andalusia, AL 36420



OF COUNSEL

EXHIBIT “1”

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none"> Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. Print your name and address on the reverse so that we can return the card to you. Attach this card to the back of the mailpiece, or on the front if space permits. 		A. Signature <i>x J. Dawkins</i> <input checked="" type="checkbox"/> Agent <input type="checkbox"/> Addressee	
1. Article Addressed to: Bill Reaves PO Box 244017 Montgomery, AL 36124		B. Received by (Printed Name) <i>L. Dawkins</i>	C. Date of Delivery 6/4/07
		D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No	
		3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input checked="" type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.	
		4. Restricted Delivery? (Extra Fee) <input checked="" type="checkbox"/> Yes	
2. Article Number (Transfer from service label)		7004 0750 0000 2101 1064	
PS Form 3811, February 2004		Domestic Return Receipt	
		102595-02-M-1540	

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none"> Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. Print your name and address on the reverse so that we can return the card to you. Attach this card to the back of the mailpiece, or on the front if space permits. 		A. Signature <i>x J. Dawkins</i> <input checked="" type="checkbox"/> Agent <input type="checkbox"/> Addressee	
1. Article Addressed to: Auto Owners Ins Co PO Box 244017 Montgomery, AL 36124		B. Received by (Printed Name) <i>L. Dawkins</i>	C. Date of Delivery 6/4/07
		D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No	
		3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input checked="" type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.	
		4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes	
2. Article Number (Transfer from service label)		7004 0750 0000 2101 1057	
PS Form 3811, February 2004		Domestic Return Receipt	
		102595-02-M-1540	